

DROUGHT RESPONSE AGREEMENT (DRA)  
BETWEEN THE UNITED STATES BUREAU OF RECLAMATION AND THE  
FORT MCDOWELL YAVAPAI NATION

1.     PREAMBLE   This DRA is entered into this 6<sup>th</sup> day of October, 2015, by and between the United States Bureau of Reclamation (“Reclamation”) represented by the Secretary of the Interior acting through the officials executing this DRA, and the Fort McDowell Yavapai Nation (“Nation”), located on the Fort McDowell Indian Reservation, Arizona, hereinafter referred to singularly as “Party” or collectively as “Parties” and pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), designated the Reclamation Act, and acts amendatory thereof or supplementary thereto, the Act of December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act, the Act of September 30, 1968 (82 Stat. 885), designated the Colorado River Basin Project Act, and the Act of June 24, 1974 (88 Stat. 266), designated the Colorado River Basin Salinity Control Act, as amended.

2.     EXPLANATORY RECITALS

2.1     WHEREAS, the Colorado River Basin is experiencing the worst 16-year drought in the historical record, and Lake Mead’s elevation has dropped to levels where the Secretary of the Interior may determine a shortage condition for Lake Mead as early as 2017;

2.2     WHEREAS, on December 10, 2014, Reclamation, the Central Arizona Water Conservation District (“CAWCD”), The Metropolitan Water District of Southern California, the Southern Nevada Water Authority (“Municipal Water Agencies”), the Arizona Department of Water Resources, the Colorado River Board of California, and the Colorado River Commission of Nevada entered into a Memorandum of Understanding for Pilot Drought Response Actions (“MOU”) that will remain in effect until December 31, 2019;

2.3     WHEREAS, under the MOU, Reclamation and the Municipal Water Agencies desire to take initial steps between 2014 and 2017 towards generating additional water to be retained in Lake Mead to reduce the risk of reaching critical reservoir elevations in a manner

consistent with the Law of the River including, but not limited to, the Consolidated Decree in *Arizona v. California*, 547 U.S. 150 (2006) and the Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (“2007 Guidelines”);

2.4 WHEREAS, a fundamental component of Lower Basin drought contingency planning is voluntary development of additional quantities of water to be retained in Lake Mead in order to reduce the risk of Lake Mead reaching critical reservoir elevations (“Protection Volume(s)”);

2.5 WHEREAS, the MOU, among other things, provides that Reclamation will use its best efforts to create 50,000 acre-feet of Protection Volume between 2014 and 2017 that will be dedicated as Colorado River System water, thereby increasing the volume of water remaining in Lake Mead;

2.6 WHEREAS, recognizing the severity of the ongoing historic drought, the Nation desires to help mitigate the impacts of the current drought by entering into an agreement with the United States through Reclamation making some of its Central Arizona Project (“CAP”) water entitlement under its Contract No. 3-07-30-W0308, Second Amendment, available in 2016 as Colorado River System water with the intent to be dedicated and considered as Protection Volume to help Reclamation meet its commitment under the MOU;

2.7 WHEREAS, in calendar year 2016 the Nation is willing to make available to Reclamation 13,933 acre-feet of the Nation’s CAP water entitlement, which water has a recent history of use, for the purpose of leaving such water in Lake Mead in exchange for a payment of \$141.00 per acre-foot totaling \$1,964,553.00; and

2.8 WHEREAS, Reclamation desires to accept the Nation’s offer to forego delivery of 13,933 acre-feet of water from its CAP water entitlement and allow such volume to remain in Lake Mead.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, Reclamation and the Nation agree as follows:

3. DEFINITIONS

3.1 Colorado River Compact means the document signed on November 24, 1922, at Santa Fe, New Mexico, pursuant to an act of Congress approved August 19, 1921 (42 Stat. 171). The Colorado River Compact was approved in Section 13(a) of the Boulder Canyon Project Act.

3.2 Colorado River System shall have the meaning ascribed to such term in the Colorado River Compact.

4. PURPOSE

4.1 The purpose of this DRA is for Reclamation to compensate the Nation to forego delivery of 13,933 acre-feet of water from its CAP water entitlement, and allow such volume to remain in Lake Mead as Colorado River System water in Lake Mead with the intent of creating Protection Volume(s).

5. IMPLEMENTATION

5.1 Implementation begins upon execution of this DRA and continues until December 31, 2016.

5.2 After January 1, 2016, the authorized representative of the Nation shall send a written water order modification request to Reclamation and CAWCD to turn back (or forego delivery of) the 13,933 acre-feet of the Nation's CAP water that the Nation previously ordered through the United States for delivery in calendar year 2016.

5.3 The Nation will forego delivery of 13,933 acre-feet of the Nation's CAP water entitlement for calendar year 2016 thereby increasing the volume of water remaining in Lake Mead. Reclamation intends to apply this volume of water toward its commitment to create 50,000 acre-feet of Protection Volume(s) under the MOU.

5.4 Reclamation will ensure that the Nation will have no obligation to pay CAWCD for CAP fixed and variable operation, maintenance, and replacement costs associated with the 13,933 acre-feet of the Nation's CAP entitlement made available under this DRA.

6. MONITORING

6.1 Reclamation will use its existing water order approval process and other authorities to ensure that the Nation's CAP water under this DRA is not ordered or used by other Colorado River water entitlement holders during calendar year 2016.

7. IDENTIFICATION AND TRACKING OF PROTECTION VOLUMES

7.1 Under the MOU, Reclamation will work with the Municipal Water Agencies to identify and track achievement of Protection Volume goals.

7.2 Reclamation and the Nation agree that the water left in Lake Mead pursuant to this DRA shall accrue to the benefit of the Colorado River System and shall not accrue to the individual benefit of the Nation or any third party.

8. COMPENSATION

8.1 A payment in the amount of \$1,964,553.00 will be made by Reclamation to the Nation no later than 30 days following receipt of the Nation's written water order modification request referred to in Section 5.2.

9. REIMBURSEMENT FOR OVERPAYMENT

9.1 In the unanticipated and unforeseen event the Nation takes action that interferes with the objective of foregoing the amount of water in Lake Mead as was paid for by Reclamation, in accordance with this DRA, the Nation agrees to reimburse for the overpayment within 30 days of receipt of a bill for collection from Reclamation.

10. GENERAL TERMS

10.1 The Nation agrees to remain in compliance with applicable Federal, State, and local environmental, cultural, and paleontological resource protection laws and regulations throughout the term of this DRA.

10.2 Reclamation shall be responsible to obtain any consents or forbearances required to ensure that the water left in Lake Mead by the Nation remains in the Colorado River System and does not inure to the benefit of any individual Entitlement Holder.

10.3 The water left in Lake Mead under this DRA will not be charged against the Nation's use of Colorado River water or charged to Arizona's Colorado River apportionment; provided, however, that in Reclamation's administration of subsection 5.8 of the Nation's CAP Contract No. 3-07-30-W0308, Second Amendment, the quantity of water left in Lake Mead by the Nation under this DRA shall be deemed to have been used and delivered pursuant to such CAP Contract when determining the amount of CAP Indian Priority Water available to the Nation during a time of shortage. This provision shall survive termination of this DRA.

10.4 None of the provisions of this DRA shall be considered waived, except when such waiver is given in writing. The failure of a party to this DRA to insist in any one or more instances upon strict performance of any of the provisions, or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or that party's relinquishment of any such rights for the future, but such provisions and rights shall continue and remain in full force and effect.

10.5 This DRA is not intended nor shall it be construed to create any third-party beneficiary rights to enforce the terms of this DRA on any person or entity that is not a party.

10.6 The Parties do not intend that any right or remedy given to a Party on the breach of any provision under this DRA be exclusive; each such right or remedy is cumulative and in addition to any other remedy provided in this DRA or otherwise available at law or in equity. If the non-breaching Party fails to exercise or delays in exercising any such right or remedy, the non-breaching party does not thereby waive that right or remedy. In addition, no single or partial exercise of any right, power or privilege precludes any other or further exercise of a right, power or privilege granted by this DRA or otherwise.

10.7 Each Party to this DRA represents that the person executing on behalf of such Party has full power and authority to do so, and that his/her signature is legally sufficient to bind the Party on whose behalf he/she is signing.

10.8 This DRA constitutes a valid and binding agreement of each Party, enforceable against each Party in accordance with its terms. This DRA is and will be binding upon and will inure to the benefit of the Parties and, upon dissolution, the legal successors and assigns of their assets and liabilities.

10.9 This DRA may be supplemented, amended, or modified only by the written agreement of the Parties. No supplement, amendment, or modification will be binding unless it is in writing and signed by the Parties.

10.10 Any notice, demand, or request shall be deemed properly served, given, or made if delivered in person; sent by registered or certified mail, postage prepaid; or overnight delivery, charges prepaid or charged to the sender's account to the persons in the positions executing this DRA.

10.11 All information and data obtained or developed with the performance of duties mentioned in this DRA shall be available upon request to a Party, subject to the provisions of the Freedom of Information Act, if applicable, or other applicable law. However, use of said reports, data and information shall appropriately reference the source for the respective documents.

10.12 The expenditure or advance of any money or the performance of any obligation by the United States under this DRA shall be contingent upon the appropriation or allotment of funds. No monetary liability shall accrue to the United States in case funds are not appropriated or allocated. In the event that the United States for any reason fails to pay the Nation any portion of the \$1,964,553.00 payment required under this DRA, the Nation shall have the right after July 1, 2016, to use or lease, under Contract No. 3-07-30-W0308, Second Amendment, any portion of the water for which payment has not been made.

10.13 No member of or Delegate to Congress, Resident Commissioner, or official of the Nation shall benefit from this DRA other than as a water user or landowner in the same manner as other water users or landowners.

10.14 Nothing in this DRA diminishes or abrogates the authority of the Secretary of the Interior under applicable Federal law, regulations, or the Consolidated Decree of the Supreme Court of the United States in the case of *Arizona v. California, et al.*, entered March 27, 2006, (547 U.S. 150 (2006)), or as it may be further modified.

10.15 In the event that any dispute arises regarding this DRA, Reclamation and the Nation agree to meet and attempt to resolve the dispute before seeking any remedy.

10.16 Nothing in this DRA shall be construed as an express or implied waiver of the sovereign immunity of either party.

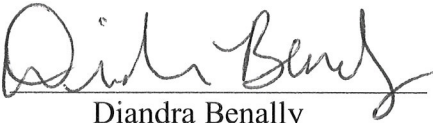
11. EFFECTIVE DATE


11.1 This DRA shall become effective upon the date of its execution by both Parties. Once effective this DRA will remain in effect until December 31, 2016.

11.2 The Parties hereto have executed this DRA on the day and year first written above.

Approved as to form:

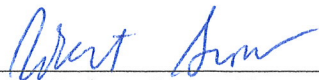
**FORT MCDOWELL YAVAPAI NATION**

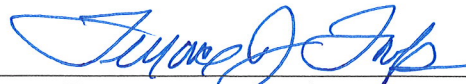
By:   
Diandra Benally  
General Counsel

By:   
Ruben Balderas  
President  
Fort McDowell  
Yavapai Nation

Approved as to form:

**UNITED STATES OF AMERICA**

By:   
Robert Snow, Esq.  
Attorney-Advisor

By:   
Terrance J. Fulp, Ph.D.  
Regional Director  
Lower Colorado Region  
Bureau of Reclamation



# Fort McDowell Yavapai Nation

P.O. Box 17779, Fountain Hills, AZ 85269 Phone (480) 837-5121 Fax (480) 837-1630

*President* Rubin Balderas *Vice President* Pansy Thomas *Treasurer* Pamela Mott  
*Council Member* Paul Russell *Council Member* Gerald Doka *Council Secretary* Selena Castaneda

## RESOLUTION AUTHORIZING THE PRESIDENT OR HIS DESIGNEE TO NEGOTIATE AND ENTER INTO A DROUGHT RESPONSE AGREEMENT (DRA) WITH THE BUREAU OF RECLAMATION (RECLAMATION) REGARDING THE NATION'S 2016 ENTITLEMENT OF CENTRAL ARIZONA PROJECT (CAP) WATER

Resolution No. Ft. McD. 2015 – 72

**WHEREAS**, the Fort McDowell (“Tribal Council”) is a governing body of the Fort McDowell Yavapai Nation (“Nation”); and,

**WHEREAS**, the Nation entered into a settlement of its Federal Reserved Water Rights in 1993, which was ratified and implemented by an Act of Congress in 1990; and,

**WHEREAS**, as part of their water rights, the Nation has an 18,233 acre-feet entitlement of CAP water of which 4,300 is under a long-term lease with the City of Phoenix leaving 13,933 acre-feet available for use;

**WHEREAS**, as approved by the Secretary of Interior on December 14, 2010, the Nation entered into a Central Arizona Project Water Lease (“Water Lease”) between the Nation and the Town of Gilbert, Arizona (“Town”) and has had subsequent one-year only lease amendments in 2011, 2012, 2013, and 2014 with the Town;

**WHEREAS**, the Colorado River Basin, where the Nation’s CAP water is derived, is experiencing the worst 16-year drought in the historical record, and Lake Mead’s elevation has dropped to levels where the Secretary of the Interior may determine a shortage condition for Lake Mead as early as 2017;

**WHEREAS**, a fundamental component of Lower Basin drought contingency planning is voluntary development of additional quantities of water to be retained in Lake Mead, in order to reduce the risk of Lake Mead reaching critical reservoir elevations (“Protection Volume(s)”) and the United States Bureau of Reclamation (Reclamation) is determined through their best efforts to create 50,000 acre-feet of Protection Volume between 2014 and 2017 that will be dedicated as Colorado River System water, thereby increasing the volume of water remaining in Lake Mead;

**WHEREAS**, recognizing the severity of the ongoing historic drought, the Nation desires to help mitigate the impacts of the current drought by entering into an DRA with the United States through Reclamation making some of its CAP water entitlement under its Contract No. 3-07-30-W0308, Second Amendment, available in 2016 as Colorado River system water that will be dedicated and considered as Protection Volume to help Reclamation meet its commitment;

**WHEREAS**, in calendar year 2016, the Nation is willing to make available to Reclamation up to 13,933 acre-feet of the Nation’s CAP water entitlement, which water has a recent history of use, for the purpose of leaving such water in Lake Mead as Protection Volume in exchange for a payment of \$141.00 per acre-foot totaling \$1,964,553.00; and



**WHEREAS**, Reclamation desires to accept the Nation's offer to forego delivery of 13,933 acre-feet of water from its CAP water entitlement and allow such volume to remain in Lake Mead as Protection Volume; and

**WHEREAS**, the water left in Lake Mead under this DRA will not be charged against the Nation's use of Colorado River water or charged to Arizona's Colorado River apportionment; provided, however, that in Reclamation's administration of subsection 5.8 of the Nation's CAP Contract No. 3-07-30-W0308, Second Amendment, the quantity of water left in Lake Mead by the Nation under this DRA shall be deemed to have been used and delivered pursuant to such CAP Contract when determining the amount of CAP Indian Priority Water available to the Nation during a time of shortage. This provision shall survive termination of this DRA; and

**WHEREAS**, Reclamation will ensure that the Nation will have no obligation to pay Central Arizona Water Conservation District (CAWCD) for CAP fixed and variable operation, maintenance, and replacement costs associated with the 13,933 acre-feet of the Nation's CAP entitlement made available under this DRA; and

**WHEREAS**, there are no waivers of sovereign immunity by the Nation; and

**NOW THEREFORE BE IT RESOLVED**, the Tribal Council finds that the DRA to be in the best interest of the Nation and hereby authorizes the Tribal President to negotiate and enter into a one year DRA with Reclamation for the Nation's 2016 CAP allocation for 13,933 acre feet.

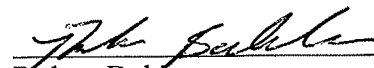
### **CERTIFICATION**

Pursuant to the authority contained in Article V, Sections 13 (A)(1) and (15), and (B)(1) and (2), of the Constitution of the Fort McDowell Yavapai Nation, ratified by the Tribe on October 19, 1999, and approved by the Secretary of the Interior on November 12, 1999, the foregoing Resolution No. Ft. McDowell 2015-72 was adopted this 29 day of Sept 2015, at a Special Council meeting held at the Fort McDowell Yavapai Nation, at which a quorum of 5 members were present, 0 were absent, by a vote of 4 for and 0 opposed and 0 abstained.


#### **Vote of the Tribal Council:**

Per the Nation's Constitution, Article V, the President only votes in a tie vote or under Article IX

Ruben Balderas, President	<u>    </u> Absent	<u>    </u> for	<u>    </u> opposed	<u>    </u> abstained
Pansy Thomas, Vice President	<u>    </u> Absent	<u>X</u> for	<u>    </u> opposed	<u>    </u> abstained
Pamela Mott, Treasurer	<u>    </u> Absent	<u>X</u> for	<u>    </u> opposed	<u>    </u> abstained
Paul Russell, Council Member	<u>    </u> Absent	<u>X</u> for	<u>    </u> opposed	<u>    </u> abstained
Gerald Doka, Council Member	<u>    </u> Absent	<u>X</u> for	<u>    </u> opposed	<u>    </u> abstained

  
\_\_\_\_\_  
Ruben Balderas  
President, Tribal Council

Attested to:

  
\_\_\_\_\_  
Selena Castaneda  
Tribal Secretary

9/29/15  
\_\_\_\_\_  
Date